

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
)	
CONOCOPHILLIPS COMPANY)	
)	
Defendant.)	
)	

CONSENT DECREE

TABLE OF CONTENTS

I.	JURISDICTION AND VENUE	2
II.	APPLICABILITY	3
III.	DEFINITIONS	4
IV.	CIVIL PENALTY	6
V.	COMPLIANCE REQUIREMENTS	7
VI.	SUPPLEMENTAL ENVIRONMENTAL PROJECT.	10
VII.	REPORTING REQUIREMENTS	13
VIII.	STIPULATED PENALTIES	17
IX.	FORCE MAJEURE	24
X.	DISPUTE RESOLUTION	26
XI.	INFORMATION COLLECTION AND RETENTION	29

XII.	FAILURE OF COMPLIANCE	32
XIII.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS	32
XIV.	COSTS	34
XV.	NOTICES	34
XVI.	EFFECTIVE DATE	35
XVII.	RETENTION OF JURISDICTION	35
XVIII.	MODIFICATION	36
XIX.	TERMINATION	36
XX.	PUBLIC PARTICIPATION	38
XXI.	SIGNATORIES/SERVICE	39
XXII.	INTEGRATION/APPENDICES	39
XXIII.	FINAL JUDGMENT	40
XXIV.	APPENDICES	40

WHEREAS Plaintiff United States of America, by the authority of the Attorney General of the United States and through its undersigned counsel, acting on behalf of the United States Environmental Protection Agency ("EPA"), filed a complaint in this action alleging that Defendant ConocoPhillips Company ("ConocoPhillips") violated Section 301 of the Clean Water Act ("Act"), 33 U.S.C. § 1301;

WHEREAS the Complaint against Defendant alleges, pursuant to Section 301 of the Act, 33 U.S.C. § 1301, that Defendant has exceeded effluent limits contained in its National Pollutant Discharge Elimination System ("NPDES") Permit for its Sweeny refinery in Old Ocean, Texas;

WHEREAS this Consent Decree is intended to constitute a complete and final settlement of the United States' claims under the Act set forth in the Complaint, and the Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint; and

WHEREAS the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest,

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the Act, 33 U.S.C. § 1319(b), and over the Parties. Venue lies in this District pursuant to Section 309(b) of the Act, 33 U.S.C. 1319(b), and 28 U.S.C. §§ 1391 (c) and 1395(a), because Defendant resides and is located in this judicial district, and the violations alleged in the Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district. For purposes of this Decree, Defendant does not contest the Court's jurisdiction over this action or over Defendant and does not contest venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 301 and 309 of the Act, 33 U.S.C. §§ 1311 and 1319.

3. Notice of the commencement of this action has been given to the State of Texas, as required by Section 309(b) of the Act, 33 U.S.C. § 1319(b).

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant, its agents, successors, and assigns.

5. Until termination of this Consent Decree, at least thirty (30) days prior to transferring ownership or operation of the Facility to any other person, Defendant shall provide a copy of this Consent Decree to each prospective successor owner or operator and shall simultaneously verify such by a written notice to EPA Region 6, the United States Attorney for the Southern District of Texas, and the United States Department of Justice, in accordance with Section XV of this Decree (Notices). Any such transfer must be conditioned upon the transferee's agreement to undertake the obligations required by this Decree, and no such transfer shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented.

6. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree; Defendant shall condition any such

contract upon performance of the work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the Act or in regulations promulgated pursuant to the Act, shall have the meaning assigned to them in the Act and such regulations. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Complaint" shall mean the complaint filed by the United States in this action;

b. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXII);

c. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;

d. "Defendant" shall mean ConocoPhillips Company.

e. "Effective Date" shall mean the date of entry of this Consent Decree by the Court after satisfaction of the public notice and comment procedures set forth in Section XX of this Consent Decree;

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;

g. "Facility" shall mean Defendant's Sweeny refinery located in Old Ocean, Texas.

h. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral;

i. "Parties" shall mean the United States and Defendant;

j. "Permit" shall mean Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 00721, issued on April 6, 2004, which supersedes and replaces NPDES Permit No. TX0007536, issued on September 29, 1989;

k. "Section" shall mean a portion of this Decree identified by a roman numeral;

l. "State" shall mean the State of Texas; and

m. "United States" shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

9. Within 30 days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$610,000 as a civil penalty. If payment is made more than 30 days after the Effective Date of this Decree, Defendant shall pay the \$610,000 principal amount, together with interest on that amount accruing from the date of Entry of the Consent Decree, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be timely provided to Defendant, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Southern District of Texas. At the time of payment, Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-5-1-1-07664 and the civil action number of this case) to the United States in accordance with Section XV of this Decree (Notices).

10. Defendant shall not deduct the civil penalty paid under this Section in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

11. Defendant shall perform all measures necessary to achieve and maintain compliance with the Act, the regulations promulgated thereunder, and all terms of the Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 00721 applicable to the Facility (the "Permit").

A. As set forth in Appendix B, Defendant certifies that it ceased discharging from Outfall 001 on April 20, 2004, and that it completed construction of a treated wastewater pipeline that terminates at Outfall 011 on the Brazos River Tidal Segment of the Brazos River Basin in January 2004. Defendant commenced discharging treated wastewater from the Sweeny Refinery through Outfall 011 on April 15, 2004. Defendant represents that its construction of the pipeline and the discharge of treated wastewater through Outfall 011 will achieve and maintain compliance with the requirements of the Act, regulations and its Permit.

B. As set forth in Appendix C, Defendant certifies that it has developed and implemented additional compliance measures relating to its permitted discharges from Outfalls 003 and 005. Defendant represents that its additional compliance measures will achieve and maintain compliance with the requirements of the Act, regulations and its Permit.

12. EPA will review the Facility's Discharge Monitoring Reports ("DMRs") submitted by Defendant during the period commencing on April 15, 2004 (commencement of discharge through the pipeline) through the term of the Decree to determine whether effluent discharged through the pipeline at the new outfall location (Outfall 011) is within Permit limits. If, at any time during this period, Defendant discharges effluent from the pipeline at Outfall 011 in violation of Permit limits for Total Suspended Solids ("TSS"), Biochemical Oxygen Demand ("BOD"), Whole Effluent Toxicity (if applicable), Oil and Grease, pH or temperature, then, within 30 days of EPA's written request, Defendant shall propose additional compliance measures to eliminate the exceedances, shall submit a schedule for the additional measures and, subject to EPA approval, shall implement the additional measures accordingly.

13. EPA will review the Facility's DMRs submitted by Defendant during the period commencing on April 15, 2004 (commencement of discharge through the pipeline) through the term of the Decree to determine whether discharges to Outfalls 003 and 005 are within Permit limits. If, at any time during this period, Defendant discharges effluent in violation of Permit limits for TOC or pH at Outfalls 003 or 005, then, within 30 days of EPA's written request, Defendant shall propose additional compliance measures, shall submit a schedule for implementation

of the additional measures and, subject to EPA approval, shall implement the additional measures accordingly.

14. Submittal and Approval of Deliverables. Defendant shall submit any plan, report, or other item that is required to be submitted for approval pursuant to this Consent Decree to EPA. EPA may approve the submittal or decline to approve it and provide written comments. Within 20 days of receiving EPA's written comments, Defendant shall either: (i) alter the submittal consistent with EPA's written comments and provide the submittal to EPA for final approval; or (ii) submit the matter for dispute resolution under Section X of this Decree. Upon receipt of EPA's final approval of the submittal, or upon completion of the submittal pursuant to dispute resolution, Defendant shall implement the submittal in accordance with the schedule in the approved submittal. EPA retains its right to seek stipulated penalties, as provided in Section VIII of this Decree (Stipulated Penalties), for any material defects in the original or revised submission.

15. Where any compliance obligation required to be met under this Section requires a federal, state, or local permit or approval, or Department of the Interior ("DOI") action with respect to the Defendant's Supplemental Environmental Project, Defendant shall submit timely and complete applications or requests and take all other actions necessary to obtain all such

permits or approvals. Defendant may seek relief under the provisions of Section IX (Force Majeure) of this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or DOI action required to fulfill such obligation, if Defendant has submitted timely and complete applications or requests and has taken all other actions necessary to obtain all such permits or approvals.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

16. Defendant shall satisfactorily complete a Supplemental Environmental Project ("SEP") that enhances the water quality and ecology in the vicinity of Defendant's Facility by donating approximately 128 acres of densely wooded land in Brazoria and Matagorda Counties, Texas, with an appraised value of not less than \$90,000, for inclusion in the Austin Woods Unit of the San Bernard National Wildlife Refuge (the "Refuge Lands Donation SEP"). Legal descriptions of the land to be donated are attached as Appendix A. Within 180 days after the Effective Date of this Consent Decree, Defendant shall complete the SEP and provide proof of such land transfer by providing copies of the deeds that transfer fee simple title from the Defendant to the United States Fish and Wildlife Service. Defendant shall also pay the costs of the appraisals, surveys and fees associated with this transfer of real property to the United States Fish and

Wildlife Service, but such expenses shall not be included in the valuation of the SEP. As stated in Paragraph 15, Defendant may seek relief under the force majeure provisions of this Consent Decree for any delays that are caused by DOI action. Defendant's obligations to implement this SEP are limited to the land donation, and do not include any responsibility to manage, maintain or operate the donated land.

17. Defendant is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. "Satisfactory completion" means that Defendant shall complete the property transfer to the United States Fish & Wildlife Service in accordance with Paragraph 16 and Appendix A.

18. With regard to the SEP, Defendant certifies the truth and accuracy of each of the following:

a. That all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and represents a fair estimate of the costs necessary to implement the SEP;

b. That, as of the Effective Date of this Decree, Defendant is not required to perform or develop the SEP by any federal, state, or local law or regulation, nor is Defendant required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. That the SEP is not a project that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. That Defendant has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action; and

e. That Defendant will not receive any reimbursement for any portion of the SEP from any other person.

19. SEP Completion Report

a. Not later than thirty (30) days after the date set for completion of the SEP, Defendant shall submit a SEP Completion Report to the United States, in accordance with Section XV of this Consent Decree (Notices). The SEP Completion Report shall contain the following information:

i. A detailed description of the SEP as implemented;

ii. A description of any problems encountered in completing the SEP and the solutions thereto;

iii. A copy of the deed and related transfer documents evidencing the perfected transfer;

iv. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and

v. A description of the environmental and public health benefits resulting from implementation of the SEP

20. Within sixty (60) days after receiving the SEP Completion Report, the United States shall notify Defendant whether or not Defendant has satisfactorily completed the SEP. If the SEP has not been satisfactorily completed in accordance with all schedules, Stipulated Penalties may be assessed under Section VIII of this Consent Decree.

21. Disputes concerning the satisfactory performance of the SEP may be resolved under Section X of this Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

22. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 27, below.

23. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the SEP under this Decree shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action, *United States v. ConocoPhillips Company*, taken on behalf of the U.S. Environmental Protection Agency under the Clean Water Act."

VII. REPORTING REQUIREMENTS

24. Defendant shall submit the following reports:

a. Within thirty (30) days after the end of each calendar-year quarter (*i.e.*, by April 30, July 31, October 31,

and January 31) after the Effective Date of this Consent Decree, until termination of this Decree pursuant to Section XIX, Defendant shall submit to EPA a quarterly report for the preceding quarter that shall include the status of any additional compliance measures (if required under Paragraphs 12 or 13) and a discussion of Defendant's progress in satisfying its obligations in connection with the Refuge Lands Donation SEP under Section VI of this Decree. The report should include, at a minimum, a narrative description of activities undertaken, compliance with the schedules or milestones for additional compliance measures (if required) and SEP implementation, and a summary of costs incurred since the previous report. In the absence of other ongoing compliance measures under Section V, this quarterly report obligation terminates in the quarter following EPA's approval of the Defendant's submittal of the SEP Completion Report. If additional compliance measures are later required under Paragraphs 12 or 13 of this Decree, then the Defendant shall report on those compliance measures in accordance with this Paragraph.

b. If Defendant violates any requirement of this Consent Decree or of its applicable Permits, Defendant shall notify the United States and the State of such violation and its likely duration in writing within ten (10) working days of the day Defendant first becomes aware of the violation, with an

explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the likely cause of a violation cannot be fully explained at the time the report is due, Defendant shall include a statement to that effect in the report. Defendant shall investigate to determine the likely cause of the violation and then shall submit an amendment to the report, including a full explanation of the likely cause of the violation, within thirty (30) days of the day Defendant becomes aware of the cause of the violation. If Defendant seeks to invoke force majeure, it shall comply with the requirements of Section IX of this Decree.

25. In the case of any violation or other event that may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA and the State orally or by electronic or facsimile transmission as soon as possible, but not later than 24 hours after Defendant first knew of, or should have known of, the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

26. All reports shall be submitted to the persons designated in Section XV of this Consent Decree (Notices).

27. Each report submitted by Defendant under this Section shall be signed by a responsible corporate officer or a duly authorized representative of that officer. For purposes of

this Section, a responsible corporate officer and a duly authorized representative of that officer are defined in 30 Texas Administrative Code §§ 305.44(a)(1) and 305.128, respectively.

Such reports shall include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my inquiry of those individuals immediately responsible for obtaining the information, that I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

28. Defendant shall retain all underlying documents from which it has compiled any report or other submission required by Paragraph 24 of this Consent Decree until five years after termination of the Decree.

29. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, or requirement.

30. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to

enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

31. If Defendant fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$2,000 per day for each day that the payment is late. Late payment of the civil penalty shall be made in accordance with Paragraph 9 above. Stipulated penalties shall, as directed by the United States, be paid by EFT, or by certified or cashier's check in the amount due payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-1-1-07664 and United States Attorney's Office file number [_____] and delivered to the office of the United States Attorney, Southern District of Texas, 910 Travis, Suite 1500, Houston, TX 77002. All transmittal correspondence shall state that any such payment tendered is for late payment of the civil penalty or for stipulated penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraph 9 above. The United States shall be entitled to collect the costs (including attorneys fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties for late payment of the civil penalty.

32. Defendant shall be liable for Stipulated Penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes violations of the Permit during the period that the Decree is in effect and failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

33. Permit Violations

a. Commencing with the lodging of this Consent Decree, the following stipulated penalties shall accrue per violation per day for any noncompliance with the Permit during the term of this Decree other than violations of effluent limits:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 14th day
\$3,000	15th through 30th day
\$5,000	31st day and beyond

b. Commencing with the lodging of this Consent Decree, the following stipulated penalties shall accrue per violation per parameter for noncompliance with effluent limits contained in the Permit during the term of this Decree:

Violation of Each ParameterPenalty

Daily Minimum/Maximum Limits as
contained in the Permit

\$1000 per day of violation

Daily/Monthly Average Limits
as contained in the Permit

\$5,000 per violation
(calculated as one violation
per the averaging period
rather than per day)

Stipulated penalties under this Subparagraph apply only to the violations of effluent limits for parameters that are the subject of this enforcement action. At Outfalls 003 and 005, only TOC and pH exceedances are subject to stipulated penalties. At Outfall 011, TSS, BOD, Oil and Grease, Whole Effluent Toxicity (if applicable), pH and temperature limits are subject to stipulated penalties.

c. Commencing with the lodging of this Consent Decree, any unpermitted discharge from Outfall 001 during the term of this Decree is subject to a stipulated penalty of \$10,000 per day of discharge.

34. Compliance Milestones

a. Commencing with the lodging of this Decree, in the event that additional compliance measures are required pursuant to Section V of this Decree, the following stipulated penalties shall accrue per violation per day for any failure to meet any of the compliance requirements identified for the additional compliance measures:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
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\$2,000	1st through 14th day
\$3,000	15th through 30th day
\$5,000	31st day and beyond

35. Reporting Requirements. The following stipulated penalties shall accrue per violation per day for any noncompliance with the reporting requirements of Section VII of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
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\$1000	1st through 14th day
\$2,000	15th through 30th day
\$3,000	31st day and beyond

36. SEP Compliance

a. If Defendant fails to transfer the land identified in Appendix A to the U.S. Fish & Wildlife Service, Defendant shall pay a stipulated penalty equal to \$120,000.

b. If Defendant fails to comply with the schedule in Section VI of this Consent Decree for implementing the SEP, Defendant shall pay Stipulated Penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
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\$1,000	1st through 14th day
\$2,000	15th through 30th day
\$3,000	31st day and beyond

Such penalties shall accrue from the date Defendant was required to meet each such milestone, until compliance with the milestone is achieved.

37. The United States shall make a demand for stipulated penalties accruing for violations under this Consent Decree, and such stipulated penalties shall be payable in accordance with the following Paragraphs.

38. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

39. Subject to the provisions of Paragraph 36 above (concerning stipulated penalties for failure to complete or abandonment of a SEP), and notwithstanding the date of any demand for such penalties, pursuant to Paragraph 37 above, all stipulated penalties shall begin to accrue on the day after the performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

40. Penalties shall continue to accrue as provided in accordance with Paragraph 39 during any dispute resolution, with interest on accrued penalties payable and calculated at the rate

established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, accrued penalties determined to be owing, together with accrued interest, shall be paid to the United States within thirty (30) days of the effective date of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall, within sixty (60) days of receipt of the Court's decision or order, pay all accrued penalties determined by the Court to be owing, together with accrued interest, except as provided in Subparagraph c, below;

c. If the District Court's decision is appealed by any Party, Defendant shall, within thirty (30) days of receipt of the final appellate court decision, pay all accrued penalties determined to be owing to the United States, together with accrued interest.

41. Upon the Effective Date of this Consent Decree, stipulated penalties for violations of applicable Permit requirements, missed milestones, or other noncompliance, as applicable occurring between the date of lodging and the

Effective Date of this Consent Decree shall be payable pursuant to the terms of this Section.

42. All stipulated penalties must be paid within thirty (30) days of the date payable. Stipulated penalties owing to the United States shall, as directed by the United States, be paid by EFT or by certified or cashier's check in the amount due payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-1-1-07664 and United States Attorney's Office file number [____], and delivered to the office of the United States Attorney, Southern District of Texas, 910 Travis, Suite 1500, Houston, TX 77002.

43. Should Defendant fail to pay stipulated penalties in accordance with the terms of this Consent Decree, the United States shall be entitled to collect interest on such penalties, as provided for in 28 U.S.C. § 1961, together with the costs (including attorneys fees) incurred in any action necessary to collect any such stipulated penalties or interest thereon.

44. Subject to the provisions of Section XIII of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States by reason of Defendant's failure to comply with any requirement of this Consent Decree or applicable law, except that for any violation of the Act, regulations or Permit

for which this Consent Decree also provides for payment of a stipulated penalty, Defendant shall be allowed a credit for stipulated penalties paid against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

45. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, its contractors, or any entity controlled by Defendant, as well as the actions of the United States Department of Interior with regard to the SEP, that delays the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. "Best efforts" include using best efforts to anticipate any potential force majeure event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

46. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, as to which Defendant intends to assert a claim of force majeure, Defendant shall provide notice in writing, as provided in Section XV of this Consent Decree (Notices), within seven (7) days of the time Defendant first knew of, or by the exercise of

due diligence should have known of, the event. Such notification shall include an explanation and description of the reasons for the delay; the anticipated duration of the delay; a description of all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; and Defendant's rationale for attributing such delay to a force majeure event. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure. Defendant shall be deemed to know of any circumstance of which Defendant, its contractors, or any entity controlled by Defendant knew or should have known.

47. Defendant shall have the burden of proving, by a preponderance of the evidence, that each event described in the preceding Paragraph was a force majeure event; that Defendant gave the notice required by the preceding Paragraph; that Defendant took all reasonable steps to prevent or minimize any delay caused by the event; and that any period of delay it claims was attributable to the force majeure event was caused by that event.

48. If the Parties agree that Defendant could not have prevented or mitigated any delay, or anticipated delay, attributable to a force majeure event by the exercise of due diligence, the Parties shall stipulate to an extension of time

for Defendant's performance of the affected compliance requirement by a period not exceeding the delay actually caused by such event. In such circumstances, the appropriate modification shall be made pursuant to Section XVIII of this Consent Decree (Modification), where the modification is a material modification to a term of this Consent Decree or is a material modification of any Appendix to this Consent Decree. In the event the Parties cannot agree, the matter shall be resolved in accordance with Section X of this Consent Decree (Dispute Resolution). An extension of time for performance of the obligations affected by a force majeure event shall not, of itself, extend the time for performance of any other obligation.

X. DISPUTE RESOLUTION

49. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, such procedures shall not apply to actions by the United States to enforce obligations of the Defendant that have not been disputed in accordance with this Section.

50. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States

a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within twenty-one (21) days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

51. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

52. The United States shall serve its Statement of Position within 60 days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant,

unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

53. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within forty-five (45) days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

54. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

55. In any dispute under this Paragraph, Defendant shall bear the burden of demonstrating that its position clearly complies with and furthers the objectives of this Consent Decree and the Clean Water Act and that Defendant is entitled to relief under applicable law. The United States reserves the right to argue that its position is reviewable only on the administrative

record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

56. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 40, above. If Defendant does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

57. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry to any facility, or to property that is the subject of a SEP, covered by this Consent Decree, at all reasonable times, upon presentation of credentials to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by Defendant or its representative, contractors, or consultants; and

d. assess Defendant's compliance with this Consent Decree.

58. Upon request, Defendant shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. Upon request, EPA shall allow Defendant to take split or duplicate samples of any samples it takes.

59. Until five (5) years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all records and documents (including records or documents in electronic form) now in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its SEP obligations under Section VI or additional compliance measures under Section V of this Decree. This record retention requirement shall apply regardless of any corporate document-retention policy to the contrary.

60. At the conclusion of the document-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least ninety (90) days prior to the

destruction of any records or documents subject to the requirements of the preceding Paragraph, and, upon request by the United States, Defendant shall deliver any such records or documents to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, reports, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

61. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain records or information imposed by applicable federal or state laws, regulations, or permits.

XII. FAILURE OF COMPLIANCE

62. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act.

Notwithstanding the United States' or the State's review and approval of any documents submitted to it by Defendant pursuant to this Consent Decree, Defendant shall remain solely responsible for compliance with the terms of the Act and this Consent Decree. Application for construction grants, State Revolving Loan Funds, or any other grants or loans, or other delays caused by inadequate facility planning or plans and specifications on the part of Defendant shall not be cause for extension of any required compliance date in this Consent Decree.

XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

63. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action, including effluent exceedances identified in the Facility's DMRs, through the date of lodging of this Decree. Further, this Decree resolves all claims of the EPA and the United States under the Act asserted in Administrative Order No. VI-97-1205 and Administrative Order No. CWA-06-01-1043, and these administrative orders are hereby closed.

64. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein. This Consent Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified herein. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

65. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Clean Water Act.

66. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

67. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIV. COSTS

68. The Parties shall each bear their own costs of litigation of this action, including attorneys fees, except as provided in Paragraphs 31 and 43, above.

XV. NOTICES

69. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-07664

and

Director, Compliance Assurance and Enforcement Division

U.S. Environmental Protection Agency
Region VI
1445 Ross Ave.
Mail Code (6EN)
Dallas, Texas 75202

and

Deputy Regional Counsel, Enforcement
U.S. Environmental Protection Agency
Region VI
1445 Ross Ave.
Dallas, Texas 75202

To Defendant:

David D. Duncan, Esq.
Legal Department
ConocoPhillips Company
600 North Dairy Ashford
Houston, Texas 77079

70. Notices, submissions, and any other written communications submitted pursuant to this Section shall be deemed effective upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVI. EFFECTIVE DATE

71. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XVII. RETENTION OF JURISDICTION

72. The Court shall retain jurisdiction of this case until termination of this Consent Decree, for the purpose of enabling any of the Parties to apply to the Court for such further order, direction, or relief as may be necessary or

appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section X of this Decree (Dispute Resolution).

XVIII. MODIFICATION

73. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court. The terms and schedules contained in Appendices of this Decree may be modified upon written agreement of the Parties without Court approval, unless any such modification effects a material change to the terms of this Consent Decree or materially affects the Defendant's ability to meet the objectives of this Decree.

XIX. TERMINATION

74. After Defendant has (a) completed the requirements of this Consent Decree, including any additional compliance measures required pursuant to Section V, the Supplemental Environmental Project required pursuant to Section VI, and the payment of the civil penalty and any accrued stipulated penalties as required by this Consent Decree, and (b) maintained satisfactory compliance with the requirements of the Act, its Permit, and this Consent Decree for a period of 18

months from the date of lodging of this Consent Decree, or from the completion of any additional compliance measures pursuant to Section V, whichever is later, then Defendant may serve upon the United States a "Motion for Termination of Consent Decree" ("Motion"), with supporting documentation demonstrating that Defendant has successfully completed all requirements of this Decree and that all other requisite conditions for termination of the Decree have been satisfied.

75. Following receipt by the United States of Defendant's Motion, the Parties shall schedule one or more conferences (which may be by telephone) to discuss the Motion and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements of the Consent Decree and whether all other requisite conditions for termination of the Decree have been satisfied. Such period of consultation shall continue for no more than sixty (60) days following receipt of Defendant's Motion.

76. If, following the consultation period provided for by the preceding Paragraph, the Parties cannot come to agreement as to whether Defendant has satisfactorily complied with the requirements of the Consent Decree, or whether all other requisite conditions for termination of the Decree have been satisfied, Defendant may file its Motion with the Court.

77. The United States shall have the right to oppose Defendant's Motion and to seek an extension of the Decree. If the United States opposes termination of the Decree, Defendant shall have the burden of proof by clear and convincing evidence that Defendant has satisfactorily complied with the requirements of the Decree and that all other requisite conditions for termination of the Decree have been satisfied.

78. If, following the consultation period provided for by Paragraph 75 above, the Parties agree that Defendant has satisfactorily complied with the requirements of the Decree and that all other requisite conditions for termination of the Decree have been satisfied, they shall file with the Court an appropriate pleading so notifying the Court and requesting termination of the Decree.

XX. PUBLIC PARTICIPATION

79. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice.

XXI. SIGNATORIES/SERVICE

80. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

81. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

82. Defendant hereby agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

83. Defendant hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXII. INTEGRATION/APPENDICES

84. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the

Decree and supersede all prior agreements and understandings, whether oral or written. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXIII. FINAL JUDGMENT

85. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States and Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXIV. APPENDICES

86. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the Legal Description of Refuge Donation Lands in Brazoria and Matagorda Counties, Texas;

"Appendix B" is a letter dated June 22, 2004 from ConocoPhillips representative Tom Rich to Kenneth G. Long, United States Department of Justice; and

"Appendix C" is a letter dated August 16, 2004, from ConocoPhillips representative Tom Rich to Kenneth G. Long, United States Department of Justice.

Dated and entered this ____ day of _____, 2004.

UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF TEXAS

FOR PLAINTIFF UNITED STATES OF AMERICA:

DATED: 9/14/04

CATHERINE R. McCABE
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources
Division

DATED: 9/22/04

KENNETH G. LONG
Senior Attorney
Environmental Enforcement Section
Environment & Natural Resources
Division
U.S. Department of Justice
Ben Franklin Station
P.O. Box 7611
Washington, D.C. 20044-7611

MICHAEL T. SHELBY
United States Attorney
Southern District of Texas

DATED: 9/24/04

ANDREW A. BOBB
Assistant United States Attorney
Southern District of Texas
TBA# 02530350
P.O. Box 61129
910 Travis Street, Suite 1500
Houston, Texas 77208

/ KGL

FOR THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY - REGION VI:

DATED: 9/17/04

RICHARD E. GREENE
Regional Administrator
United States Environmental
Protection Agency
Region VI
1445 Ross Avenue
Dallas, Texas 75202-2733

DATED: 9-15-04

MARCIA E. MONCRIEFFE, ESQ.
Assist. Regional Counsel (6RC - LA)
United States Environmental
Protection Agency
Region VI
1445 Ross Avenue
Dallas, Texas 75202-2733

FOR THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY - HEADQUARTERS:

DATED: _____

THOMAS V. SKINNER
Acting Assistant Administrator for
Enforcement and Compliance
Assurance
U.S. Environmental Protection
Agency

FOR DEFENDANT CONOCOPHILLIPS COMPANY

DATED:

T. J. RICH
General Manager, Sweeny Refinery
ConocoPhillips Company
P.O. Box 866
Sweeny, TX 77480